



Howard County Citizens Association

Since 1961...

The Voice Of The People of Howard County

Date: October 19, 2016
Subject: Consideration for Action to Turn Down the Sound at Merriweather Post Pavilion

Dear Members of the State Delegation:

The Howard County Citizens Association (HCCA) appreciated the meeting on September 20, 2016 with the State Delegation, County Council, and other local officials. It helped describe residents' escalating concerns over the increasing amount of noise from the Merriweather Post Pavilion (MPP).

MPP has broken faith with the Delegation. When the 2013 noise control legislation was being debated, MPP representatives vowed that MPP noise would be no louder than before. The truth is that a greater number of people have now been affected by more noise and for longer periods of time from MPP than ever before, and the County's Environmental Health officials have confirmed that MPP's noise levels are indeed louder and that MPP has even violated the 2013 law.

To our knowledge, in 2013 MPP did not divulge to the Delegation the actual impact of allowing higher loudness levels on the logarithmic dBa scale:

- The 95 dBa limit within 1/4 mi. in the 2013 legislation is 800% louder to the human ear than 65 dBa (the pre-2013 limit before 10 p.m.)
- The 95 dBa limit is 1600% louder than 55 dBa (the pre-2013 limit after 10 p.m.)
- The 72.5 dBa limit beyond 1/4 mi. in the 2013 legislation is nearly 100% louder than 65 dBa
- The 72.5 dBa limit is nearly 400% louder than 55 dBa.

If there are public records about MPP's testimony to the Delegation to the contrary, please let us know. We cannot imagine that the Delegation would have allowed such higher loudness limits if it had known those enormous impacts.

MPP management's testimony about going out of business if the current noise limits were lowered is simply not credible. There is no other venue nearby, nor probably in the country, that has limits as high as the 2013 legislation set for MPP. Please see **Attachment 2. HCCA's proposal will allow MPP to continue to operate.**

After the September 20 meeting, there was interest by some officials in achieving a "middle ground" to balance the needs of MPP with the needs of surrounding residential communities. In the spirit of achieving this balance, HCCA proposes that the Delegation simply introduce a few amendments to the existing law, as follows:

- **In Section 3-401(c)(7)(i)1. A., replace "11 p.m." with "10 p.m.", and in Section 3-401(c)(7)(i)1. B, replace "between 11 p.m. and 11:30 p.m." with "between 10**

p.m. and 10:30 p.m." (in general, reinstates pre-2013 time controls only, for the area within 1/4 mi.)

- **Delete Section 3-401(c)(7)(i)2.** (reinstates pre-2013 dBA and time controls for only the area beyond 1/4 mi.)
- **In Section 3-401(c)(7)(ii)1., replace "11:30 p.m." with "10:30 p.m."** (allows an extra half-hour for any emergency post-performance announcements)
- **Near the end of Section 3-401(c)(7)(i), add "and with at least 5,000 permanently fixed seats" between the words "individuals" and "that"** (applies the law to MPP's main amphitheater only and makes clear Symphony Woods not included)
- **In Section 3-401(c)(7)(i)1., insert "front center of the main venue stage," between "the" and "produces."** (clarifies the point from which distances from MPP are measured to match 1/4 mile radius circle shown September 20th)

Please review the following attachments as it is further reasoning regarding why you should consider and act on the request of your constituents to simply turn down the sound at MPP.

- **Attachment 1. Markup of COMAR Section 3-401** shows the above recommendations as they would appear in the legislation.
- **Attachment 2. HCCA's proposal will allow MPP to continue to operate**
- **Attachment 3. HCCA's proposal will allow additional land development near MPP**
- **Attachment 4. The Delegation cannot rely on the sound control remediation that MPP stated it will implement**
- **Attachment 5. Other venues' noise limit restrictions**
- **Attachment 6. Financial Analysis of MPP's Contribution to the County**
- **Attachment 7. MPP management's testimony at Planning Board SDP-16-018 hearing December 17, 2015**

HCCA requests that the aforementioned amendments to the 2013 law be supported by the Delegation and introduced as a bill at the 2017 session of the General Assembly. In the near term, we hope that this is of high priority for the delegation.

We would appreciate your feedback and support, and we offer our assistance to you in implementing our proposed amendments.

Sincerely,

Stu Kohn
HCCA President

cc: County Council, County Executive

Attachment 1. Markup of COMAR Section 3-401

3-401.

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(7) (i) Except as provided in subparagraph (ii) of this paragraph, in Howard County, the sound level limits and noise control rules and regulations adopted under this subsection may not prohibit the electronic amplification of sound at an outdoor concert venue with a capacity of over 15,000 individuals **AND WITH AT LEAST 5,000 PERMANENTLY FIXED SEATS** that:

~~1. Wi~~ within the area that is included in a 0.25 mile radius of the **FRONT CENTER OF THE MAIN** venue **STAGE**, produces sound that is:

~~A 1.~~ 95 dba or lower between 9:00 a.m. and ~~11:00~~ **10:00** p.m.;

and

~~B 2.~~ 55 dba or lower between ~~11:00~~ **10:00** p.m. and ~~11:30~~ **10:30** p.m.; ~~and~~

~~2. Within the area that is outside a 0.25 mile radius of the venue, produces sound that is:~~

~~A. 72.5 dba or lower between 9:00 a.m. and 11:00 p.m.; and~~

~~B. 55 dba or lower between 11:00 p.m. and 11:30 p.m.~~

(ii) 1. Except as provided in subparagraph 2 of this subparagraph, an outdoor concert venue with a capacity of over 15,000 individuals may not produce any electronic amplification of sound between ~~11:30~~ **10:30** p.m. and 9:00 a.m.

Attachment 2. HCCA's proposal will allow MPP to continue to operate

MPP's statements are not at all credible that it will close if the 2013 noise controls are changed. This isn't the first time that MPP threatened to close if it didn't get its way. Back in 1988, MPP stated that it would close if it was not granted a variance from the noise standards. The written decision of the State's Air Management Administration stated, "The proponents are fearful that the Pavilion will be forced to close if the variance is denied." The decision goes further to say, "In the absence of any credible indication that Merriweather Post Pavilion will close as a result of denying the request for variance, the Department cannot consider potential closure as a justification for granting the variance." The State denied the variance. MPP did not close.

Clearly, there is no reason for bands to avoid MPP if the law is changed. All of the venues in the region as well as across the nation have much stricter noise control laws, and yet bands continue to play at those venues. We have been unable to find any venue in this country with as high noise limits as are currently in place for MPP. Our proposed amendments are in line with many of the controls at other successful venues.

Please see **Attachment 5. Other venues noise limit restrictions.**

Given that MPP is very unlikely to close if the 2013 law is amended, whatever tax revenue that the County and State receive from MPP would not change. We remind the Delegation, however, that the resulting monetary benefit may be a lot lower than claimed, especially when the huge public cost of providing extensive police services for all of the shows is taken into account. An analysis by Chris Alleva indicates that about half of those revenues are offset by the costs of police services. And Chris thought he was being very generous in favor of MPP regarding the number of additional hotel rooms rented and meals purchased, and made no allowance for the additional EMS and Emergency Room services provided.

Please see **Attachment 6. Financial Analysis of MPP's Contribution to the County.**

Attachment 3. HCCA's proposal will allow additional land development near MPP

MPP's assumptions are wrong that any changes to the 2013 law would jeopardize future development in the Crescent area. HCCA's proposal does not make changes to the maximum noise limits of 95 dBa for the area within 1/4 mi. of MPP – the area where most of the new development will occur. HCCA proposes to only change dBa controls for areas beyond 1/4 mi. of MPP because those established areas should not be forced to be any worse off from a noise control standpoint than before 2013. That means reinstating the 65 dBa limits before 10 p.m., 55 dBa limits after 10 p.m., and the definition of 7 a.m. - 10 p.m. as the daytime hours for those areas.

In contrast with controls in the 2013 law, the pre-2013 controls have a lot of credence because they are based on a history of good science and accepted community standards. The State code recognizes 65/55 dBa and the 10 p.m. limits as achieving levels that "are protective of the public health and welfare" and that those levels were determined "based on available data which relate noise exposure to health and welfare effects, with due consideration to technical and economic factors." Howard County's noise control law also recognizes 10 p.m. as the community standard for the upper limit for enduring noise in residential areas.

MPP's rationale for retaining the daytime limit of 11 p.m. is very weak. On week-ends, MPP could easily start early and stop shows at 10 p.m. because the notion of starting later to miss the commuter traffic doesn't apply on Saturdays and Sundays. On the relatively fewer shows on week-days, it's even more critical to stop shows at 10 p.m. because the noise disturbs many residents who need to go to bed early in order to go work or school the following day. Starting shows at 7:30 p.m. and ending them at 10 p.m. is very reasonable because it allows a full 2.5 hours for a show, and under the pre-2013 noise laws MPP thrived with bands performing under that schedule for around 40 years.

Attachment 4. The Delegation cannot rely on the sound control remediation that MPP stated it will implement

MPP management has stated that it may not implement all of the sound control remediation steps it said it would at the Planning Board Hearing on SDP-16-018 on December 17, 2015. At this Planning Board Hearing Brad Canfield, MPP Operator, stated that MPP agreed to abide by the recommendation of the consultant (i.e. Cerami's recommended noise mitigation measures) and would implement a few things requested by the Health Department. Among these was changing the speaker system to implement new technology that would enable them to focus the sound on the lawn area so that noise did not go beyond MPP.

Please see **Attachment 7. MPP management's testimony at Planning Board SDP-16-018 hearing December 17, 2015**

The Planning Board's approval of the SDP was based on MPP management's testimony.

After the September 20th, 2016 meeting with the elected officials, Health and Police Departments, MPP management and HCCA members was over, Jim Miller, an HCCA and HoCoSoundSense member, asked Mr. Canfield why he had not mentioned the new technology speaker system. Mr. Canfield told Jim he might not implement it.

While the community would like to see MPP implement all of the noise mitigation measures it said it would at the Planning Board Hearing, there is still no guarantee that those measures would adequately return the quiet enjoyment of their property to the residents. If MPP's technology changes are actually implemented and proven to work to reduce the noise to pre-2013 limits, then the bizarrely huge noise limits in the 2013 law are no longer needed by MPP, and approving the proposed amendments now would provide an incentive to MPP and assurance to the community. If, however, MPP does not implement all those changes, then MPP becoming a good neighbor is very questionable and makes approving those amendments now even more essential.

The Delegation should reinstate the pre-2013 noise limits that provided the necessary guarantee of the quiet enjoyment of one's property. How MPP decides to become a good neighbor and live within the pre-2013 noise restrictions is their business.

Attachment 5. Other venues' noise limit restrictions

Note: All noise limits in dBa weighting scale unless specified otherwise. dB is unweighted and does not ignore bass like dBa.

| Venue | Capacity | Receiving | Days | 7a-9a | 9a-10p | 10p-11p | 11p-11:30p | 11:30p-7a | Comments |
|------------------------|----------|-------------|-------|-------|--------|---------|------------|-----------|---|
| Merriweather | 17,000+ | < .25 mile | all | 0 | 95 | 95 | 55 | 0 | |
| Merriweather | 17,000+ | > .25 mile | all | 0 | 72.5 | 72.5 | 55 | 0 | |
| Jiffy Lube | 25,000 | Residential | WkDay | 60 | 60 | 55 | 55 | 55 | |
| Jiffy Lube | 25,000 | Residential | WkEnd | 55 | 60 | 55 | 55 | 55 | |
| Wolf Trap | 7,000 | Residential | Su-Th | 60 | 60 | 55 | 55 | 55 | Loudspeakers prohibited at night |
| Wolf Trap | 7,000 | Residential | F-SA | 60 | 60 | 60 | 55 | 55 | Loudspeakers prohibited at night |
| Wolf Trap | 7,000 | Residential | all | 100dB | 100dB | 80dB | 80dB | 80dB | Impulse (35 millisecond) noise limit |
| Barron Carter | 4,200 | Residential | all | - | - | - | - | - | No set limit, but UNLAWFUL to create noise disturbance |
| Mann Center | 14,000 | Residential | all | 70dB | 70dB | 70dB | 70dB | 70dB | dB controls loud bass |
| Red Rocks Amphitheatre | | | | | | | | | 125 dB limit at mix position controls bass, nearest residence 4453 feet away |
| Bangor, ME | | | | | | | | | 110 dB limit at mix position controls bass |
| Delaware | | Residential | all | 65 | 65 | 55 | 55 | 55 | |
| Kansas City | | Residential | all | 60 | 60 | 55 | 55 | 55 | Also has separate dB limits for each of 9 octaves covering from 22Hz to 11.3kHz |

Attachment 6. Financial Analysis of MPP's Contribution to the County

**Merriweather Post
Direct and Indirect Tax Receipts**

Annual Basis

09/26/16

| | | | | | | |
|--|--------|--------------------|----------------------|-----------------|----------|------------------------|
| <u>Average Attendance (Note 1)</u> | Events | Total Attend | Avg Ticket | Gross Revenue | Tax rate | County Benefit |
| 12,000 | 33 | 396,000 | \$62.00 | \$24,552,000.00 | 5.00% | \$1,227,600.00 |
| <u>Rooms Sold (Note 2)</u> | | <u>Total Rooms</u> | <u>Avg Rate</u> | | | <u>Room Tax Recpts</u> |
| 1,200 | 33 | 39,600 | \$100.00 | \$3,960,000.00 | 7.00% | \$277,200.00 |
| <u>Restaurant Meals (Note 3)</u> | | <u>Total Meals</u> | <u>Avg Meal Tick</u> | | | <u>Sale Tax Recpts</u> |
| 4,800 | 33 | 158,400 | \$35.00 | \$5,544,000.00 | 6.00% | \$332,640.00 |
| Total County Revenue From Merriweather Events | | | | | | \$1,837,440.00 |
| Less Event Police Protection | | | | | | |
| | | '30*\$113.71*8 | | | | |
| 30 Officers @ \$113.71 Per hr (Note 4) | 33 | 27,290 | | | | -\$900,583.20 |
| 8 hrs **** | | | | | | |
| Total Net Benefit to County Including Hotel Stays and Restaurant Meals | | | | | | \$936,856.80 |
| Net Annual Benefit to the County Pavilion Only(Admission tax-Police Cost) | | | | | | \$327,016.80 |

Notes

1. Attendance assumptions Based on 10 year History
Citizens Advisory Panel Merriweather Post Pavilion
Study 1993-2004
[HTTP://civilityandtruth.com/.../citizens-advisory-panel-on-merriweather-post-pavilion-fin...](http://civilityandtruth.com/.../citizens-advisory-panel-on-merriweather-post-pavilion-fin...)
2. 10% of Average Attendance
3. 40% of Average Attendance
4. Customary Detail is 30 officers on overtime at time and a half

| | | | | | |
|-------------------------------------|-----------------|-------------------|-----------------|------------------------|-----------------|
| 2017 Budgeted Annual Personnel Cost | Authorize Force | Avg Annual Salary | Work Year Hours | Avg Straight Time Rate | Overtime at 1.5 |
| \$92,376,944.00 | 677 | \$136,450.43 | 1800 | \$75.81 | \$113.71 |

**Attachment 7. MPP management's testimony at Planning Board SDP-16-018
hearing December 17, 2015**

BC: denotes testimony from Brad Canfield, MPP operator.

PB Mbr: denotes questions or comments from a Planning Board member.

BC: "Brad Canfield. 10475 Little Patuxent Parkway. The operator of Merriweather. Uhm, can I answer any questions on permits, sound, or uhh parking? Any of the questions involving that type of stuff. But we do agree with the parking assessment. We also agree to abide by the recommendation of the consultant, and lengthy, many lengthy lengthy, discussions with the Health Department actually added a few more things that we were going to do as well, which was changing the speaker system, and uhh investigating permanently installed monitors."

PB Mbr: "Ok, all right. Questions?"

PB Mbr: "So, when you become involved with the mitigation system do you, do you monitor that throughout each concert? I mean are you in the middle of a concert and you're like somebody's getting calls or how does that work exactly? Because, I guess, each performance a lot of people bring, they they have their own equipment, right? Their own thing?"

BC: "About half the shows we provide all the audio equipment,"

PB Mbr: "Ok."

BC: "and half the shows we provide half the audio equipment."

PB Mbr: "Ok."

BC: "So we always provide the lawn speakers, those are always us. Uhm, the pavilion speakers is fifty fifty."

PB Mbr: "Ok. So the noise, well, I mean, it has to come from a combination of everything, right? I mean it doesn't just come from the lawn speakers?"

BC: "Correct."

PB Mbr: "It's carrying across."

BC: "Correct."

PB Mbr: "Exactly, explain to us how exactly that works, your mitigation and at what point is it implemented and so forth."

BC: "So it's the low end from the highest point that travels the furthest. And so that was the recommendation of the Cerami study was to remove all low end from the lawn system, so there is no bass coming off the lawn system, and that is something that we agreed to do. To do that. And there is probably more than enough low end coming from the stage that someone on the lawn is still going to get the same quality sound, that that far back. And the second recommendation was, the technology has changed a lot and 20 years ago was big giant square speakers that blasted a lot of energy in the direction. Speaker technology now, and our expert can talk more on that, but they use complex algorithms to actually design the sound to go to every single seat, and nowhere else. And that's, uhh, the other part that we're working with the Health Department in using that same system on the lawn so we can focus the sound only to people sitting on the lawn and nowhere else."

PB Mbr: "So, so you're dealing with an array of speakers?"

BC: "It's an array that's using algorithms to shoot it exactly where we map it to. Play that sound which will be a much improved condition than just taking energy and throwing it across the lawn and where it stops nobody knows."

PB Mbr: "This is like the Jetsons or something."

Audience: Laughter.